

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STARLA BRAHAM,

Plaintiff,

v.

AUTOMATED ACCOUNTS, INC., a
Washington Corporation, and
MICHELLE DOE AND JOHN DOE,
husband and wife and the marital
community comprised thereof,

Defendants.

NO. CV-10-0385-EFS

**ORDER GRANTING DEFENDANTS'
SUMMARY JUDGMENT MOTION,
DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT, AND
CLOSING FILE**

A hearing occurred in the above-captioned matter on February 21, 2012, in Richland. Plaintiff Starla Braham was represented by Kirk Miller. Thomas Smith appeared on behalf of Defendants Michelle Bull and Automated Accounts, Inc., who was also represented by counsel Tim Durkop.¹ Before the Court were the parties' summary-judgment motions: Ms. Braham's Motion for Summary Judgment on Defendants' Liability, ECF No. [37](#), and Defendants' Motion for Summary Judgment, ECF No. [24](#). After reviewing the record, considering the legal authority, and hearing from counsel, the Court is fully informed. For the reasons given below, the Court grants summary judgment in Defendants' favor.

¹ Michelle Bull was identified as Michelle Doe in the Complaint, ECF No. [1](#).

1 **A. Facts²**

2 In 2008, Ms. Braham visited the Deaconess Hospital emergency room
3 and received treatment for an injury. As a result of this treatment, Ms.
4 Braham incurred a debt, which remained unpaid. Deaconess referred the
5 unpaid debt to Automated Accounts.

6 Ms. Bull works for Automated Accounts and her duties include calling
7 debtors/consumers to verify account information and handling credit
8 reporting calls. To recover Ms. Braham's Deaconess debt, Ms. Bull spoke
9 with Ms. Braham multiple times in 2008 and 2009. Ms. Bull and Ms. Braham
10 agreed to allow Ms. Braham to pay \$50 per month toward the debt. In
11 October or November 2008, Ms. Braham began making such payments, and for
12 several months she made payments toward the debt. However, in August or
13 September 2009, Ms. Braham began making the payments late.

14 In October 2009, Ms. Braham deposited money into her bank account
15 through the ATM. Not all of the deposited funds were available when
16 Automated Accounts attempted to electronically withdraw the previously-
17 agreed upon payment. On November 2, 2009, Ms. Bull spoke to Mr. Braham

18
19 ² This factual statement is based primarily on the parties' Joint
20 Statement of Agreed Facts for Summary Judgment. ECF No. [51](#). In this
21 factual statement, agreed facts are not supported by a citation to the
22 record, while disputed facts are supported by a citation. The Court has
23 not weighed the evidence or assessed credibility and has not accepted
24 assertions made by a party that were flatly contradicted by the record.
25 *See Scott v. Harris*, 550 U.S. 372, 380 (2007); *Anderson v. Liberty Lobby,*
26 *Inc.*, 477 U.S. 242, 255 (1986).

1 on the phone. The parties dispute the exact contents of this unrecorded
2 telephone conversation, which was not overheard by anyone else. But the
3 parties agree that Ms. Bull advised Ms. Braham that the agreed-upon
4 electronic withdrawal had been denied and, as a result, Automated
5 Accounts would start the "legal process" to collect Ms. Braham's debts.
6 They also agree that Ms. Bull's tone was polite and she did not yell or
7 use unpleasantries.

8 Ms. Braham describes her conversation with Ms. Bull as follows:

9 I [Ms. Bull] talked with my supervisor already and we are going
10 to start the process of garnishing your wages. And I said,
11 what does that mean? She said the legal process. And I said,
what does that mean? She said garnishing your wages. That is
what she said. Nothing else was said to me.

12 ECF No. [28](#)-1 at 34. Ms. Braham interpreted this to mean that Automated
13 Account would immediately start to garnish her wages. *Id.*

14 In comparison, Ms. Bull states that during this telephone
15 conversation she told Ms. Braham that due to the late payment she would
16 refer the matter to Automated Accounts' legal department. ECF No. [29](#) at
17 3. Ms. Braham then asked whether this legal process included
18 garnishment, and Ms. Bull responded that garnishment is part of the legal
19 process. *Id.* at 3-4.

20 Later that day, Ms. Braham called Automated Accounts and asked to
21 speak to Ms. Bull's supervisor, Mario Ruiz. ECF No. [29](#) at 4. Mr. Ruiz
22 agreed to process another payment for Ms. Braham. ECF No. [30](#) at 3.
23 During this conversation, Mr. Ruiz could hear Ms. Braham's husband, Larry
24 Braham, discuss loudly in the background that wages could not be
25 garnished without first obtaining a judgment.

1 Soon after their respective phone calls with Ms. Braham, Ms. Bull
2 and Mr. Ruiz documented their conversations on Automated Accounts'
3 computer program. This computer program does not allow the inputted
4 comments to be altered or amended after the notes are made. The notes
5 made by Ms. Bull stated, in pertinent part: "IN THE END I ADVSD STARTG
6 LEGAL ON ACCT. SHE ASKED IF THAT MEANS GARN? I ADVSD GARN IS PART PROCESS
7 LEGAL. SHE UNDERSTDS." ECF No. [31](#)-1 at 165. On the same date as these
8 telephone conversations, Ms. Bull requested assignment of Ms. Braham's
9 debt from Deaconess.

10 The November 2, 2009 conversation with Ms. Bull upset Ms. Braham,
11 causing her to shake, cry, and have a panic attack later that day. ECF
12 No. [42](#) at 4. Ms. Braham continued to fear that her wages would be
13 garnished and caused her to feel greater anxiety than she typically felt
14 regarding her family's financial situation. This fear continued until
15 January 2011 when she closed the subject bank account. *Id.* at 5.

16 In January 2010, Ms. Braham received a letter from Automated
17 Accounts informing her that her debt remained unpaid. The January 2010
18 letter did not mention garnishment. Ms. Braham made no further payments
19 toward this debt, and in January 2011, she closed the bank account that
20 Automated Account had previously withdrew money from for payments toward
21 the debt.

22 On October 29, 2010, Ms. Braham filed this lawsuit, alleging
23 violations of the Fair Debt Collections Practices Act (FDCPA), 15 U.S.C.
24 § 1692 *et al.* Following discovery, the instant cross-motions for summary
25 judgment were filed. ECF Nos. [24](#) & [37](#).

26 ///

1 **B. Standard**

2 Summary judgment is appropriate if the record establishes "no
3 genuine issue as to any material fact and the movant is entitled to
4 judgment as a matter of law." Fed. R. Civ. P. 56(a). The party opposing
5 summary judgment must point to specific facts establishing a genuine
6 issue of material fact for trial. *Celotex Corp. v. Catrett*, 477 U.S.
7 317, 324 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
8 U.S. 574, 586-87 (1986). If the nonmoving party fails to make such a
9 showing for any of the elements essential to its case for which it bears
10 the burden of proof, the trial court should grant the summary judgment
11 motion. *Celotex Corp.*, 477 U.S. at 322.

12 **C. Authority and Analysis**

13 Ms. Braham contends Defendants violated §§ 1692e(4), 1692e(5), and
14 1692f of the FDCPA during the November 2, 2009 telephone conversation
15 between Ms. Braham and Ms. Bull because Ms. Bull advised that Ms.
16 Braham's wages would be garnished even though no judgment had been
17 entered. Defendants submit that, even when viewing the facts in Ms.
18 Braham's favor, Ms. Bull's conduct did not violate the FDCPA.

19 To prove a FDCPA violation, Ms. Braham must establish 1) she was the
20 object of collection activity arising from a consumer debt, 2) Defendants
21 are debt collectors, and 3) Defendants engaged in conduct prohibited by
22 the FDCPA. See *Piper v. Portnoff Law Assocs., Ltd.*, 396 F.3d 227, 232-35
23 (3d Cir. 2005) (analyzing FDCPA claim). The first two elements are
24 undisputed: Defendants are debt collectors who seek to collect a
25 consumer debt from Ms. Braham. The third element, i.e., whether
26 Defendants violated the FDCPA, is disputed.

1 When analyzing whether Defendants violated the FDCPA, the Court
2 applies the "least sophisticated debtor" standard. *See Gonzales v. Arrow*
3 *Fin. Servs., LLC*, 660 F.3d 1055, 1061 (9th Cir. 2011). This objective
4 standard is "'designed to protect consumers of below average
5 sophistication or intelligence,' or those who are 'uninformed or naive,'
6 particularly when those individuals are targeted by debt collectors."
7 *Id.* at 1062 (quoting *Duffy v. Landberg*, 215 F.3d 871, 874-75 (8th Cir.
8 2000)); *see also Terran v. Kaplan*, 109 F.3d 1428, 1431-32 (9th Cir.
9 1997). Yet, this standard requires the debtor to utilize some
10 reasonableness and be willing to read and understand the information
11 provided by the debt collector. *Gonzales*, 660 F.3d at 1062. Therefore,
12 a debt collector is not liable for "bizarre," "idiosyncratic," or
13 "peculiar" misinterpretations. *Id.* It is the court's task to resolve
14 the legal question of whether the debt collector's language when viewed
15 in its entirety violates the FDCPA. *Terran*, 109 F.3d at 1432; *Pipiles*
16 *v. Credit Bur. of Lockport*, 886 F.2d 22, 25 (2d Cir. 1989) (requiring the
17 entire language to be considered when analyzing claims of deception under
18 the FDCPA).

19 Here, the Court focuses on whether Ms. Bull's reference to the
20 garnishment process and legal process violate 15 U.S.C. §§ 1692e(4) and
21 (5) and 1692f. Section 1692e states, in pertinent part:

22 A debt collector may not use any false, deceptive, or
23 misleading representation or means in connection with the
24 collection of any debt. Without limiting the general
25 application of the foregoing, the following conduct is a
26 violation of this section:

27

28 (4) The representation or implication that nonpayment of any
29 debt will result in the arrest or imprisonment of any

1 person or the seizure, garnishment, attachment, or sale
2 of any property or wages of any person unless such action
3 is lawful and the debt collector or creditor intends to
4 take such action.

(5) The threat to take any action that cannot legally be taken
or that is not intended to be taken.

5 15 U.S.C. § 1692e. And § 1692f prohibits a debt collector from using any
6 false representation, or unfair, unconscionable, or deceptive means to
7 collect or attempt to collect a debt. *Id.* § 1692f.

8 When considering the entirety of the November 2, 2009 conversations,
9 the Court concludes that, even when viewing the evidence in Ms. Braham's
10 favor, Defendants' conduct did not violate §§ 1692e(4), 1692e(5), or
11 1692f. Ms. Bull advised Ms. Braham that due to her late payment
12 Automated Accounts would start the *process* of garnishment and the legal
13 *process*. No threat of immediate garnishment or specific legal action was
14 made; rather, Ms. Bull generally cautioned that the process of beginning
15 such action would occur. Because Ms. Braham's payment was late,
16 Automated Accounts had the legal authority to initiate such processes.
17 And Automated Accounts intended to initiate the legal action as is
18 evidenced by Ms. Bull's requested assignment of Ms. Braham's debt from
19 Deaconess. Therefore, Defendants did not violate § 1692e(4) and (5).
20 The Court likewise finds that Ms. Bull did not use any false
21 representation or unfair, unconscionable, or deceptive means to collect
22 the debt; thus, Defendants did not violate § 1692f.

23 Ms. Braham argues that Ms. Bull did not fully explain what the legal
24 process, or process of garnishment, meant and that it was not Ms.
25 Braham's "obligation to seek explanation of confusing or misleading [debt
26 collection] language" *Gonzales*, 660 F.3d at 1062. Yet, there

1 was no specific legal action being taken that needed to be further
2 explained. The Court acknowledges that discussions relating to
3 garnishment could frighten and stress a debtor and that "a literally true
4 statement can still be misleading." *Gonzales*, 660 F.3d at 1062; *see also*
5 *Jeter v. Credit Bur., Inc.*, 760 F.2d 1168, 1178-79 (11th Cir. 1985)
6 (recognizing that a lawsuit might cause a debtor "embarrassment,
7 inconvenience, and further expense"). However, Ms. Bull discussed
8 garnishment as part of the legal process to be used once Ms. Braham's
9 debt payment was late. Ms. Bull did not indicate that Automated Accounts
10 would begin garnishing Ms. Braham's wages immediately; rather, Ms. Bull
11 cautioned the legal process to do so would be initiated. Prohibiting a
12 debt collector from calmly advising a debtor who is late in her payments
13 that the debt collector will begin the legal process of collecting on the
14 debt, including initiating the legal process to garnish wages, does not
15 serve the FDCPA's purpose of eliminating "abusive debt collection
16 practices by debt collectors." 15 U.S.C. § 1692(e). Furthermore, Ms.
17 Bull's comments, and the least sophisticated debtor's willing
18 understanding of such, must be considered in light of Ms. Braham's
19 subsequent conversation with Mr. Ruiz. Ms. Braham requested that
20 Automated Accounts initiate another draw on her bank account. Mr. Ruiz
21 agreed to do so, and did attempt another draw. This second attempted
22 draw was unsuccessful. Thereafter, Defendants appropriately pursued the
23 legal processes involved in collecting on the debt. Because no FDCPA
24 violation occurred, Defendants are granted summary judgment.

25 //

26 /

1 **D. Conclusion**

2 For the above-given reasons, **IT IS HEREBY ORDERED:**

3 1. Ms. Braham's Motion for Summary Judgment on Defendants'
4 Liability, **ECF No. [37](#)**, is **DENIED**.

5 2. Defendants' Motion for Summary Judgment, **ECF No. [24](#)**, is
6 **GRANTED**.

7 3. **Judgment** is to be entered in Defendants' favor **with prejudice**.

8 4. All pending motions and hearings are **STRICKEN**.

9 5. This file is **CLOSED**.

10 **IT IS SO ORDERED.** The District Court Executive is directed to enter
11 this Order and provide copies to counsel.

12 **DATED** this 21st day of February 2012.

13
14 S/ Edward F. Shea
15 EDWARD F. SHEA
16 United States District Judge

17 Q:\Civil\2010\0385.ms1.lcl.wpd
18
19
20
21
22
23
24
25
26